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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 PAULINO PORTILLO-OROZCO,

15 Defendant.

Case No. 2:20-CR-00054-RMP

GOVERNMENT'S RESPONSE TO
MOTION TO DISMISS

Date: May 10, 2022, at 11:00 a.m.
Without Oral Argument¹

16 The Defendant asks this Court to join an aberration – *United States v. Carrillo-*
17 *Lopez*, 555 F. Supp. 3d 996 (D. Nev. 2021) – which, as the Court is aware, has been
18 rejected by both this Court and every other district court to consider whether 8 U.S.C.
19 § 1326 was enacted in violation of the Fifth Amendment's guarantee of equal
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23 ¹ The Government agrees that oral argument and an evidentiary hearing are
24 unnecessary in this matter and would instead ask the Court to incorporate by reference
25 the testimony of Professor Deborah Kang and counsels' arguments from the
26 January 28, 2022, motion hearing and briefing in *United States v. Munoz-De La O*,
27 Case No. 2:20-CR-00134-RMP. To ensure that any and all arguments are preserved
28 for appeal, the Government files the Government's Response (Exhibit 1), the
Government's Sur-Reply (Exhibit 2) and the transcript from the January 28, 2022
evidentiary hearing (Exhibit 3). The Government asks the Court to consider all prior
arguments raised in *Munoz-De La O* when considering the Defendant's Motion to
Dismiss.

1 protection. *See United States v. Munoz-De La O*, No. 2:20-CR-00134-RMP,
2 2022 WL 508892, at *8 (E.D. Wash. Feb. 18, 2022). As in *Munoz-De La O*, the Court
3 should decline the Defendant’s invitation.² *Carrillo-Lopez* rests upon the wrong legal
4 standard, improperly creates a doctrine of legislative “original sin” by which
5 subsequent iterations of Congress – separated by as much as seven decades – are
6 forever tarred by the actions, words, and motivations of their most reprehensible
7 predecessors, and ignores the legitimate governmental interests achieved through the
8 criminalization of repeated unlawful reentries into the United States.
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11 This Court should follow *Munoz-De La O*,³ as well as every one of its sister
12 courts, and reject both *Carrillo-Lopez* and the Defendant’s attempt to subvert the
13 Government’s repeatedly affirmed authority over immigration matters. The
14 Defendant’s focus on the 1920’s betrays the weakness inherent in the Defendant’s
15 Motion – failing to find evidence of racial animus concerning § 1326, the Defendant is
16 forced to delve deep into the past and try to impute those motives onto every
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² As the Court is aware, the Court, while denying Mr. Munoz-De La O’s motion to
24 dismiss, rejected a number of the Government’s arguments. *See Munoz-De La O*,
25 2022 WL 508892, at *9 (rejecting Government’s argument that rational basis review
26 applied), *10 (rejecting Government’s argument that Mr. Munoz-De La O failed to
27 demonstrate a disparate impact). The Government reproduces those arguments in the
28 attached Exhibits to ensure that the issues are preserved for a likely appeal.

³ As noted above, although the Government asks the Court to follow *Munoz-De La O*
in denying the Defendant’s Motion, the Government seeks to preserve the arguments
rejected by the Court for a likely appeal.

1 subsequent Congress to enact, or reenact, the challenged statute. As this approach is
2 legally improper, the Defendant's Motion should be denied.

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4 Dated: April 25, 2022.

5 Vanessa R. Waldref
6 United States Attorney

7 s/Michael J. Ellis
8 Michael J. Ellis
9 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Christina Wong

s/ Michael J. Ellis
Michael J. Ellis
Assistant United States Attorney